APPEAL NO. 032917
FILED DECEMBER 29, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on October 23, 2003. The hearing officer determined that the respondent (claimant herein) suffered a compensable injury on _____, and that the claimant had disability from June 7 through August 12, 2003. The appellant (carrier herein) files a request for review, contending that the claimant did not suffer a compensable injury or have disability because his injury did not take place in the course and scope of his employment. The claimant responds that he was in the course and scope of his employment when he was injured.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The facts of this case are not really in dispute. The parties stipulated that the claimant sustained an injury on _____, and that, due to this injury, the claimant was unable to retain employment at his preinjury wages from June 7 through August 12, 2003. The question was whether the claimant, who was injured in a motor vehicle accident (MVA), was in the course and scope of his employment at the time of his injury. At the time of the accident the claimant was traveling to his worksite using the most direct route. The claimant was in a company-furnished, or at least a company-equipped, vehicle and it was part of his duties to stop on the way to the jobsite to obtain diesel fuel to be used in the bulldozer he operated for the employer. The claimant was paid by employer for the time he was involved in the drive, so he was "on the clock" at the time of the accident.

The sole basis upon which the carrier is appealing the hearing officer's decision that the claimant suffered a compensable injury and had disability is that the claimant was not in the course and scope of his employment at the time of his injury. The carrier has two separate points in support of its position. The carrier first argues that the claimant was not in the course and scope of his employment, even though in a company vehicle, pursuant to Section 401.011, because he was not furthering the affairs of the employer at the time of the injury. The carrier also argues that the claimant was only traveling from his home to work at the time of his injury and therefore was not in the course and scope of his employment. The carrier also argues that the fact the claimant was traveling in a company vehicle and was "on the clock" would not bring the claimant within the course and scope of employment. The carrier cites Texas Workers' Compensation Commission Appeal No. 010122, decided March 5, 2001, and Texas Workers' Compensation Commission Appeal No. 010996, decided June 21, 2001, as authority for its position.

We find no merit in the carrier's contention that the claimant was not furthering the affairs of the employer at the time of the accident. At the time of the accident the claimant was on his way to pick up diesel fuel for the bulldozer he would be operating for work. The claimant was also in a vehicle furnished by the company and met the requirements of Section 401.011(12)(A). The hearing officer recognized this when he made the following Finding of Fact No. 2:

> The claimant was operating a company furnished truck and was furthering the business affairs of his employer at the time he was injured on _____.

We also find the carrier's reliance on Appeal No. 010122, *supra*, and Appeal No. 010996, *supra*, is misplaced. The decision in Appeal No. 010122 turns on the fact that at the time of her MVA the claimant in that case was returning to home from an alternate work site in her own vehicle. While the claimant in Appeal No. 010122 was being paid for her travel time, she was not in a company vehicle and was not on her way to perform a work-related errand comparable to that of picking up the diesel fuel in the present case. The present case is also distinguishable from Appeal No. 010996, *supra,* because in that case, while the claimant was "on call" when he was involved in an MVA traveling to home from work, he was also not performing a work-related errand comparable to picking up the diesel fuel as in the present case.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Michael B. McShane
Appeals Panel
Manager/Judge